93-969

Supreme Court, U.S.
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No. ____

In The

Supreme Court of the United States

October Term, 1993

RALPH ROGER BERGMAN

Petitioner,

vs.

UNITED STATES OF AMERICA

Respondent.

To The United States Court Of Appeals For The Federal Circuit

PETITION FOR WRIT OF CERTIORARI

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13 pp

QUESTION

(1) Can res-judicata protect Government bad faith before US courts to find "HARMLESS ERROR" for it's admitted 5 CFR #351(1973) RIF laws violations: Petitioner"shafted"; no retention rights; no current records; false PD's; false work history; preempted reemployment rights; "awarding" position scheduled for abolishment; **and** bankrupting Petitioner; forcing disability retirement; denial of record correction, **while Government pleaded "intentional tort" under 28 USC #2680(h), invoking sovereign immunity** for perjury, fraud and deception before courts below and the US Supreme Court.

(2) Whether Respondent acted properly to violate Petitioner's Constitutional rights to liberty, property, due process, equal justice, and Supreme Court doctrines against res-judicata on opinions won in bad faith while jubilant DOC and DOJ officers abused their power, mocked and ridiculed Petitioner, congratulated themselves on his defeat, delighted in his pain and suffering, recommended his current appeal **"for your reading pleasure, another appeal by Bergman"** while persuading MSPB and court below, that Petitioner's 20 year fight against illegal RIF is "frivolous"; "recreational";"without merit";"requiring sanctions".

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PREFACE

This request for a writ of certiorari is submitted most humbly to the highest court in the land. It is neither frivolous, nor is it "recreational litigation", nor it is without merit, nor does it make unfounded allegations. Petitioner has been branded with these adjectives by the court below, repeating words previously written by DOC lawyer William A. Biglow to MSPB and repeated by DOJ Mr. John K. Lapiana to the Court below. Thus, the Court below has succumbed once more to the power of "assumption of truth" under sovereign immunity and the unlimited budget of the United States Department of Commerce to defeat this Petitioner at all costs. No arguments under "assumption of truth" supported by the US Department of Justice, can erase the truth, self-certified in writing by the Respondent. That is the gravamen of his dilemma. Having nothing to overcome the problem, he attacks this Petitioner by berating his character and motives without just cause. This motion for certiorari is based entirely on the documented self-admitted law violations of the Respondent who fled to sanctuary under court-awarded 28 USC #2680(h) sovereign immunity for Respondent-claimed intentional tort.

Respondent certifies in writing:

1) CSC Commissioner:"Bergman shafted".

2) DOC: "We deceived CSC appeals authorities".

3) DOC:"Bergman was misclassified, we misled FEAA/ARB, agency concedes."

4) DOC:"Agency RIF records were not prepared."

5) DOC:"Bergman's engineering skills were erroneously determined"

6) DOC:"Our own engineering skill audit of Bergman was withheld"

7) DOC on employee request for PD audit per CSC finding:"Request audit and you will be out of a job; shut up, you have no right of appeal; don't make waves."

8) DOC on Bergman's Pd's, marked:"Confidential":
" we admit CSC audit finds Bergman's PD's not accurate".

9) DOC on partial reinstatement: "award a "paper" job scheduled for abolishment, then run another RIF".

10) DOC delight on Bergman's pain and suffering: "For your reading pleasure, another appeal by Bergman" and "Bergman has an attorney, where did he go to law school?".

11) "Congratulations",DOJ comment on Ct.Cl. victory based on perjury and fraud protected by 28 USC

#2680(h) immunity:

12) DOC fear of own fraudulent Ct.App. pleading: "EYES ONLY".

13) DOC fear on own bad faith Ct.Cl. pleading: "EYES ONLY".

14) DOC delight on fraud success on US Courts including US Supreme Court: "...even accepting Bergman's allegations of fact, he failed to charge constitutional tort for which a remedy is available". "He is now out of time".

These are only some of the prima face hard–documented statements from the records of the Respondent and referenced in this brief. Petitioner prays that the US Supreme Court will not allow these admitted law violation to become lawful constitutional Civil Service policy of the Government by enforcing "RES–JUDICATA" as demanded by Respondent, nor that the US Supreme Court Justices will allow Respondent's bad faith before this court in response to BERGMAN V.US S.Ct.#85–44, with 9 counts cited on pages 12 to 17 in BERGMAN V. US. Cert.Brief #89–1946, to go unnoticed. Petitioner's only objective here is justice for this Petitioner.

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NOTE: Petitioner has done his best on citations but there may be some missing information on a cite. A health problem in current cold weather limits law library trips. May this Honorable Court please forgive him.

In The

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October Term, 1993

RALPH ROGER BERGMAN

Petitioner,

vs.

UNITED STATES OF AMERICA

Respondent.

To The United States Court Of Appeals For The Federal Circuit

Petitioner, Ralph Roger Bergman, respectfully prays that a writ of certiorari issue to review the judgement and opinion of the United States Court of Appeals for the Federal Circuit entered in this proceeding on August 20th 1993 for the purpose of reversing the erroneous res–judicata opinion of the court below.

OPINIONS BELOW

The opinion of the Merit System Protection Board (MSPB) was entered on 6/2/93 and appears in the Appendix starting at page OP11

The opinion of the US Court of Appeals for the Federal Circuit was entered on August 20th 1993 and appears in the Appendix, starting on page OP1.

JURISDICTION

The opinion of the US Court of Appeals for the Federal Circuit was entered on August 20th 1993. Petitioner filed for certiorary on 11/12/93. It was returned 11/17/93 for not meeting format. Petitioner was given to end of December 1993 to re-file and did. Jurisdiction is invoked under 28 USC #1254(1).

STATUTORY AND REGULATORY PROVISIONS

Constitution of the United States and it's Amendments.

28 USC #1254(1), Court Jurisdiction.

28 USC #2680(h), Sovereign Immunity.

5 CFR #351(1973) Federal Regulations on Reduction-In-Force.

CASE INTRODUCTION

This RIF case violates all principles of fairness and justice where the Government uses the full resources of the US Department of Justice to enforce res–judicata to protect ill–gotten victories over this former Federal scientist. The documents of the Respondent so certify and are the only ones addressed in this brief. Quoting with apologies to this court: "Bergman was shafted"; "was misclassified", "worked under false PD's in wrong Competitive Levels"; "DOC intentionally misled FEAA ARB"; "Competing Employee Registers and records were not prepared","We withheld our own skill audit of Petitioner from FEAA ARB"---"Errors Harmless To Petitioner" according to Court of Claims?" No. Do they violate US Civil Service law? Yes. Did the Court of Claims ruling result from capricious bad faith litigation of Respondent? Yes, he invoked 28 U.S.C.#2680(h) sovereign immunity. Is this JUSTICE? No. Is Petitioner frivolous, fighting against this Respondent–certified miscarriage of justice? No. Is this "recreational litigation"? No. Is Respondent jubilant over success of his fraud on the courts? Yes!

RESPONDENT'S "VICTORY" CELEBRATION

"For your reading pleasure, another appeal by Bergman" so DOC lawyer William A. Biglow laughs, taunts and ridicules Petitioner's MSPB brief on 3/24/93, Appendix (C) and 1/17/93 he writes" Motion to compel from Bergman. He must have decided to skip making a request for discovery. By the way he has un (an) attorney: Dawson Joyner–Boulder Colo. Where did he go to law school?", see Appendix (D). DOC Counsel Niel Friedman, proudly announced dismissal of DOC DOJ fraud on the US Supreme Court (D.Ct.Colo.#87–F–1391 (1988)), tells DOC Law Chief Hubin on 4/25/88: "...even accepting Bergman's allegations of fact , his complaint fails to state a constitution tort for which a remedy is available... and...the time limit for filing a claim... ...has passed." see Appendix (F).

DOJ lawyer Beacham O. Brooker deceived the Ct.App.Fed.Circ.on 9/30/92, tells DOC Law Chief Hubin on 1/12/93 "Congratulations", Appendix (A).

"EYES ONLY"

On 1/19/83 Hubin sent it on triumphantly to NTIA Director Dr. William "Bill" Utlaut and six other officers

under "EYES ONLY" caution. And on 6/21/84 he sent Dr. Utlaut a copy of the 9/30/82 Brooker fraud on Court of Appeals for Federal Circuit also under "EYES ONLY" caution, see document in Exhibit (B).

"EYES ONLY" was Mr. Hubin's caution to NTIA Director Dr.Utlaut on 4/20/82 as he sent a memo outlining how to circumvent PD accuracy requirement law through DOJ Brooker argument to the US Court of Claims, Appendix (C). Brooker did.

Here is a self-portrait of an agency that burdens courts with bad faith, needing to win at any cost, at any price, whatever it can "lawyer" with unlimited budgets. It's officers (assisted by DOJ lawyers) persuaded the court below to find that Petitioner has received justice, is frivolous, without merit, litigates for pleasure and wastes the resources of his fellow citizen. These matters will be addressed below. This case cries out for justice under the law of the United States!

STATEMENT OF THE CASE

Petitioner, Ralph Roger Bergman, worked as an electronics engineer for the DOC in Boulder, Colorado between 1962 and 1977 when forced into disability

retirement. Reduction–In–Force (RIF) actions accounted for three years of unemployment.

Petitioner worked under erroneous physicist PD's that did not describe his actual engineering work. In a 1968 RIF, the agency used the false PD's to deny him engineering displacement rights and physicist position displacement was denied on the grounds that had not worked in "physics". His appeal failed. At Court of Claims trial in 1981, Richard K. Mazeau, a classification expert for DOC Assistant Secretary Elsa A. Porter, testified unopposed that based on a 1976 CSC audit of Petitioner's work, that in 1967–68 he worked as GS–12 Electronic Engineer.

Petitioner was re–employed later in 1968 and became project leader on engineering projects sponsored by NASA and the US Air Force. Mexico, Canada, Great Britain and France supported his work on the satellite and transoceanic cable communication projects. One of his international travel orders are shown in Ct.Cl.Ex. #195.

FALSE DUTY STATEMENTS

Petitioner requested PD correction in 1969, 1971 and in 1973 knowing that false PD's are fatal. DOC

threatened termination if he continued appeals and terminated him through "RIF" on August 31, 1973. His GS–11 "physicist" PD was abolished. The agency said the position was "reorganized". He was the only employee RIF'ed by the agency. An official audit by Assistant Secretary of Commerce Elsa A.Porter in 1977 stated, that based on CSC audit re–written duty statements in November 1976, Petitioner had worked as GS–13 Electronic Engineer when affected by RIF on August 31, 1973, but the agency certified him engineering unqualified. Agency use of false PD's was policy which violated 5 CFR #351 and it's own personnel manual! A CSC (Denver Region) audit of DOC practices in Boulder, Colorado dated 1974, addressed agency personnel practices under DOC officer Edgar A. Hubin (see Ct.Cl.Ex."109): "...Many RSS (Research Support Service) employees interviewed indicated a reluctance to "make waves" for fear of some kind of reprisal. For example, three employees reported being told that they would be "out of a job" if the requested a position audit. Other employees reported that supervisors made statements such as, "Grievances are not appreciated around here.";"Keep

your mouth shut, you have no right of appeal." and "Don't make waves or you will regret it..." This, according to CSC audit in 1974.

A letter headed "CONFIDENTIAL" from Mr. Edgar A. Hubin to J.A.Kemper of the DOC Boulder Colorado of 12/22/76 surfaced under FOIA (Ct.Cl.Ex.#321) in 1981. This letter references the 1976 CSC audit on Petitioner's PD inaccuracy and Mr. Hubin states confidentially in pertinent part: "You are aware, this report found in Bergman's favor in respect to his contentions that the position description of his employment history were not accurate. In particular the Commission determined that they lacked necessary specificity and detail, as well as accuracy with actual duties performed.... ... The accuracy of the position description is the foundation stone of the system, on which employment processes, RIF processes, promotion determination, performance awards, training eligibility, and discipline actions will stand or fall..." The Court of Claims was persuaded through Mr.Hubin's perjured affidavit of February 1979 and other testimony to find Petitioner's false duty statements "Harmless Error".

The court was misled by Mr. Hubin for which he demanded and received sovereign immunity in Bergman v,US 567 F.Supp.460(D.Colo.1983) Affd.751 F.2d 314 (10th Circ.1984). Conducting RIF with false PD's, knowing that "accuracy of the position description is the foundation stone of the system, on which employment processes, RIF processes, promotion determination, performance awards, training eligibility, and discipline actions will stand or fall..." is not only ludicrous, it is malicious. Objection to this cannot be frivolous or without merit to such self-certified law violation of Respondent under sovereign immunity. Petitioner's 1981 trial subpoenas to the two officers of the CSC FEAA to testify on this matter, were quashed ex-parte by DOJ Kenneth Melvin before Petitioner was not given a copy of the motion to quash. So he could not file a proper response. His objection at trial was denied.A letter by Mr Joseph C. Brown, DOC Policy Chief, dated 1/18/79, to DOC Assistant Secretary Elsa A. Porter, was discovered under FOIA in 1981 (Ct.Cl.Ex.#300) and states:" Current contentions, not new but now supported by evidence Bergman did not

have before: (1) Previously-held positions mis-classified... ...Agency concedes..." (2) "Certain agency officials misled FEAA and/or ARB..."

Petitioner asks: was this "Error Harmless to Petitioner" as ruled by the Court of Claims? No! But the Court of Claims was persuaded by Respondent to find all his 5 CFR #351 law violations to be "ERROR HARMLESS TO PLAINTIFF". This is supposed to be the "justice" that Petitioner has received according to the court below.

CURRENT RECORDS OF COMPETING EMPLOYEES.

Before Petitioner was terminated on August 31, 1973, he requested inspection of the mandated retention registers and records for current competing employees under 5 CFR #351.505(1973) which states in pertinent part:"Each agency shall maintain the current, correct record needed to determine the retention standing of its competing employees. The agency shall allow inspection of its retention registers and records by (a) A representative of the Commission; and (b) An employee of the agency to the extent that the registers and records have a bearing on his case...."

Petitioner's lawful for request for inspection was denied on August 10th, 1973 by APO Ben Darby (Ct.Cl.Ex.#218). Petitioner appealed his RIF to the CSC. The agency defended with the false PD's, denying his actual work record, certifying him to CSC as a low support employee without engineering qualifications, while suppressing it's own partial secret audit that showed petitioner qualified as GS–11 Electronic Engineer.(Ct.Cl.Ex.#375 and Ct.Cl.Ex.#312.)

Although he was denied access to a full listing of competing employees in his competitive area Petitioner found engineering positions that survived a prior mass RIF. With the secret GS–11 electronic engineer audit result of 1975 withheld by Edgar A. Hubin (Ct.Cl.Ex.#312) and relying on capricious DOC pleading that certified Petitioner totally unqualified in engineering, the CSC FEAA qualified Petitioner as GS–7 electronic engineer. An example of this bad faith was a 07/26/74 letter to the CSC FEAA by DOC Frank White Smith, that Petitioner had worked as a low level support person, was unable to properly write in the English language, was unqualified for engineering work and that his PD's were accurate (Ct.Cl.Ex.#51).

Assistant Secretary Porter addressed this letter on October 25 1977 (Ct.Cl.Ex.#82) and wrote "...The audit report discloses clearly, in my judgment, that the contents of the Smith letter to the appeals authorities was deliberately deceptive and intended to mislead the appellate office... ...I will not condone such action by any official of this Department..."

The Court of Claims ruled this "Error harmless to plaintiff"in 1982. Sevretary Porter took no corrective action to counter the CSC FEAA deceit by Mr. Smith, but the position of the DOC Executive Officer was abolished and he was terminated. Here is another example how the Court below on August 20th 1993 was misled to "find" that Petitioner's claims of bad faith pleading was without merit and frivolous. It was not Petitioner who claimed bad faith, it was the Assistant Secretary of Commerce, Mrs Elsa A. Porter.

The court below just supported the capricous and untrue pleading of DOC lawyer ("for your reading pleasure, another appeal by Bergman" (App.Ex.C)) William A. Biglow through DOJ lawyer John K. Lapiana, under "assumption of truth" and 28 USC #2680(h) sovereign immunity. How easy that is!

RETENTION RIGHT ACCRUAL DATE

The CSC violated 5 CFR #351.506(1973) regarding Petitioner's retention rights. These rights accrue on the date an employee is released and so Petitioner's retention rights accrued as of August 31 1973. This was violated by the CSC FEAA in their opinion of January 24, 1974. The CSC FEAA stated:

"...The appellant has introduced no evidence to show that his retention rights would be greater on August 31,1973, then on June 30th, 1973. Accordingly his assignment rights will be determined as June 30th 1973..." Not only does this violates 5 CFR #351.506(1973) law, but it was "Catch 22" as Petitioner could not meet this challenge because (a) the agency denied him access to records of current competing employees as of August 31, 1973 (Ct.Cl.Ex.#218) and (b) the agency certified under FOIA seven years later in 1980 that these records never existed as they were never prepared, see (Ct.Cl.Ex.#312).

The CSC FEAA violated the letter of the law in 5 CFR #351.506(1973), enacted by Congress, which states: "Effective date of retention standing:...The retention standing of each employee released from his

competitive level in the order prescribed in #351.602 is determined as of the date he is so released."

Petitioner's demands for current records of competing employees as of August 31, 1973 and his denial of records used by the agency pertaining to a RIF that ended on June 30th 1973 is neither "technical" nor is it "frivolous", nor it is "without merit".

5 CFR #351.505(1973 states: "Records. Each agency shall maintain the current, correct records needed to determine the retention standing of its competing employees. The agency shall allow the inspection of these retention registers and related records by: (a) A representative of the Commission and (b) An employee of the agency to the extent that the registers and records have a bearing on his case...".

The records where never prepared by the agency and so never existed, as admitted by DOC under FOIA in 1980(Ct.Cl.Ex.#312). DOC pleaded to the Court of Appeals through DOJ lawyer Beacham O. Brooker on September 30th 1982, that there was no need to prepare these records <u>because there were no competing employees</u>, a total falsity, see submission of his fraudulent Court of Appeals brief to DOC Law

Chief Edgar A. Hubin in Appendix Ex.#B, which Mr. Hubin passed on with "EYES ONLY" caution to NTIA Director Dr.William Utlaut (same exhibit).

The false records used by the agency and burdened on this Petitioner, the CSC FEAA and the Court of Claims, pertained to June 30th, 1973, a date correlating with the end of an April 1973 RIF and showed 41 pages of abolished competing employee positions for the April 1973 noticed mass RIF.

1975 PARTIAL REINSTATEMENT TO A "PAPER JOB"

Petitioner was partially reinstated by CSC order in July 1975 to GS–7 part time engineer position as the highest engineering skill level that was supposed to have reached, although Respondent's own audit of February 2, 1975 (Ct.Cl.Ex.#375) rated Petitioner skilled as GS–11 engineer. This audit was withheld from CSC (Ct.Cl.Ex.#312) because it opposed the "totally unskilled" argument of the agency to the CSC FEAA.

Not known in July 1975, was that the agency planned to circumvent the CSC order and created a "paper job", scheduled for abolishment to again separate Petitioner, as shown in secret notes of DOC Policy Chief Joseph C. Brown, discovered in 1980

(Ct.Cl.Ex.#84). Thus we see that the "REORGANIZATION" claimed by the agency as reason for the August 1973 RIF was actually a personal vendetta against Petitioner for reasons not known. All his supervisors, NASA and the US Air Force, had certified his excellent work to CSC FEAA, Ct.Cl.Ex.#17,#18,#19,#38,#39,#40,#49. One of his official agency travel orders in support of his work for he US Air Force is shown in Ct.Cl.Ex.#195 and authorizes official project leader travel to Washington DC, London England, Paris France, Copenhagen Denmark,Cologne Germany, Rome Italy, returning to London and Washington to Boulder. It was signed on 11/20/72 by now NTIA Director Dr.William Utlaut, the same Dr.Utlaut that reviewed the "EYES ONLY" submissions by Law Chief Edgar A. Hubin of his fraudulent pleading through DOJ lawyer Beacham O. Brooker, see Appendix Ex.A,B,C. How all this agrees with the "official" agency position before the CSC FEAA in 1974 that Petitioner was just an illiterate low-support person (Ct.Cl.Ex.#51) escapes this Petitioner. All this was "Harmless error" according to Court of Claims in 1982, supported by Ct.App.Fed.Circ in 1983.

But in the 1975 "reinstatement" to the "paper job", Petitioner was put at a desk without assignment for 6 months, then gives assignments with false data and defective computer programs which made him sick and forced him into disability retirement in 1977. The agency had achieved its ultimate goal. Supposedly this is the United States Civil Service, a proud and honorable organization?

1977 DOC SECRETARIAL AUDIT

A 1977 DOC audit by Assistant Commerce Secretary Elsa A. Porter found that Petitioner's work qualified him as GS–13 electronic engineer at the time he was terminated on August 31, 1973, based on his true duties reflected in the re–written duty statements of the CSC dated November 8th 1976, that he was falsely classified, disadvantaged in the 1973 RIF and that DOC staff misled CSC FEAA, but the Secretary took no action, also see Ct.Cl.Ex.#300. Petitioner filed in Court of Claims, introduced a November 8th 1976 CSC audit, a Government Court of Claims exhibit, which certified that none of his 1962–1973 PD's met CSC accuracy, a matter acknowledged "confidentially" by the agency in 1976,

(see Ct.Cl.Ex.#321) . Employment under false PD's was "policy" as shown by the CSC audit of 1974, Ct.Cl.Ex.#109, referenced above. The Court of Claims found all this to be "Error Harmless to Petitioner in 1982. Petitioner's lawful litigation under the laws of the Courts and the laws of the United States, using only the cited Government admissions and documentation is neither frivolous nor is it without merit, as claimed by the court below on August 20th 1993..

"BERGMAN SHAFTED"

There is a letter by CSC Commissioner Ersa N. Poston dated 1/10/78 to CSC Chairman Campbell in the Bergman files of the FEAA under #523 and shown in Ct.Cl.Ex.#335 (App.Ex.G) which quoted Asst.Comm.Sec.Elsa A Porter stating that her Commerce Secretarial Investigation "uncovered two pieces of new information which they felt showed that Bergman had been "shafted". Petitioner has not been able to get a copy these documents. These documents are all official records known to the Respondent.

All these FOIA discovered DOC documents

were introduced but in 1982 the court supported the agency holding (1) it had only limited jurisdiction, (2) that all documented 5 CFR #351 RIF law violations were "ERRORS HARMLESS TO PLAINTIFF" and (3) matters pertaining to agency torts were beyond court jurisdiction. Petitioner's brief in opposition to agency proposed facts and conclusions of law was secretly cut from the court record by persons unknown, see BERGMAN V.US S.Ct.Brief #88-1519, Appendix C. Petitioner's appeal to the Court of Claims in 1982 to return this brief into the record, was denied by the Court of Appeals for the Federal Circuit in 1982, leaving the Court a record on appeal, prejudiced for the Respondent.

No rational person knowing the undisputed facts certified by Respondent and the record can claim that this Petitioner has received "justice"!

DOC MEMOS AND LETTERS DISCOVERED APRIL 16,1993:

Petitioner's lawful litigation for cancellation of illegal RIF actions failed. In April 1993 Petitioner discovered records showing DOC and DOJ officers

expressing reading pleasure, amusement and glee at Petitioner's pain and suffering and his struggle for justice. There were 1982 and 1983 memos marked "EYES ONLY" and "CONGRATULATIONS" attached to bad-faith DOJ pleading that duped courts to "find" for the DOC and a 1988 letter surfaced, written by DOC's own Regional Counsel informing the DOC Personnel Law Chief in Boulder Colorado regarding DOC bad faith before the US Supreme Court:"...even accepting Bergman's allegation of facts, his complaint fails to state a constitutional tort for which a remedy is available..."

Federal officers have received sovereign immunity under 28 U.S.C. 2680(h) in "BERGMAN" for misleading the US Court of Claims, the US Court of Appeals for the Federal Circuit and the Supreme Court of the United States. How then, can this citizen argue his case before the Supreme Court? He has no monies for counsel and his "legal skills" are shamefully inadequate, but try he does!

The court below stated that Bergman "has received justice", that he is "obstinate", engaged in "recreational litigation", "deprives others" and that his

appeal is "frivolous". He is pictured as a dissatisfied monster without conscience, who misuses "pro-se" privilege, who throws frivolous accusations like the fictitious Don Quixote, "charging imaginary windmills", but Respondent's own documents contradict his "assumption of truth" pleading prima facie. On June 6th, 1989, the late Judge Alfred A. Arraj, US.D.Ct.Colo., granted Petitioner informa pauperis appeal, stating:" ...the Court having examined said Motion and Affidavit finds that this appeal is not frivolous and presents a substantial question...", see BERGMAN, S.Ct.#89-1946, Appendix "C". Judge Arraj had recognized that he was duped by Respondent to rely on the success of DOC Edgar A. Hubin and DOJ Beacham O Brooker Jr. fraud on the Court of Claims. First Judge Arraj awarded these officers 28 USC #2680(h) sovereign immunity for deceiving the US Court of Claims and the US Court of Appeals in 1982/83. Then he ruled Petitioner's privacy act record correction case "out of time", basing his ruling on the 1982 opinion of the Court of Claims submitted by Respondent, the very same opinion for which he had previously granted the DOC and DOJ officers

sovereign immunity on their own claim of intentional tort pleaded through DOJ counsel Nancy Rice to the court. But Respondent's pleading to the 10th Circuit defeated Petitioner. Unlimited money begets unlimited power under sovereign immunity.

Petitioner believes that the DOJ Brooker and DOC Hubin memos and Friedman letter discovered in April 1993 and addressed in detail below, are no different from the secret White House tapes of President Richard Nixon and the secret diaries of Senator Robert Packwood. The 4/16/93 memos shown below reflect the true face of Respondent in his quest for total victory over Petitioner. Reduction–In–Force is an action neccessitated by certain conditions specified in 5 CFR #351. It is not a hunting licence to vent personal vendettas for what–ever reason.

On August 20th, 1993 the Court of Appeals for the Federal Circuit were misled for a second time to issue an opinion that erred in fact. The first time was on 1/10/83 when it relied on DOJ counsel Beacham O. Brooker Jr. factually false pleading of September 30th 1982. Brooker sent copy of the January 1983 appeal denial to DOC Personnel Officer Edgar A. Hubin on

1/12/83 exclaiming "CONGRATULATION!" on his victory over Petitioner and that the fraud was accepted as "truth" by the court. Brooker's bad faith won him 28 USC #2680(h) immunity (Bergman v.US 567 F.Supp.460(D.Colo.1983). This memo is re–written in Appendix (A) according to court rules and reproduced full size color on the back page of App.Ex.(A). Mr. Brooker had sent a copy of his 9/30/82 fraudulent Ct.App.Fed.Circ. submissions to DOC law Chief Edgar A. Hubin on 9/30/82, who sent a copy of the Brooker memo attached to the fraudulent 1982 Brooker pleading under "EYES ONLY" caution to Agency Director Dr William Utlaut on June 21, 1984. It says "Done 6.27 EAH". This memo is typed per Ct.rule in Appendix (B) and shown in full size color on the back page of Appendix (B).

In the Court of Claims in 1982 Petitioner had pleaded the existence of a MSPB case DC 03518210311 dated February 26th 1982, to Court of Claims. It states: "A RIF cannot take place until employees are on accurately classified position descriptions". Edgar A Hubin sent "EYES ONLY copy to Dr.Utlaut on 4/20/82 to shield him from knowledge. It is shown

re–written according to court rules in Appendix (C). The memo shows Beacham O. Brooker Jr. was instructed to void the decision impact before Ct.Cl.in 1982. He succeeded. In 1983 Edgar A. Hubin invoked sovereign immunity in D.Ct.Colo. for his bad faith before the Court of Claims.

Petitioner's struggle to overcome agency torts are a source of ridicule, amusement and delight to DOC. Petitioner's opposition to DOC "motion to dismiss" to MSPB, dated 2/17/92 surfaced in DOC files April 16th 1993 with memo attached by DOC counsel William A. Biglow addressed to MASC (Mountain Administrative Support Center) director Jim Warren, dated 3/24/92. This memo is shown re–typed and as original in Appendix (D). Mr.Biglow states to Mr. Warren:" FOR YOUR READING PLEASURE, ANOTHER APPEAL BY BERGMAN. OUR RESPONSE IS DUE ON 4/14/92. DOJ counsels repeated Biglow's untruths, again submitted the void 1982 Ct.Cl.opinion to the same court below and so certified Biglow's inputs as "truth" on 08/20/93.

And so Mr. Biglow recommended as "reading pleasure" Petitioner's career destruction due to

successful federal torts and the fact that Petitioner was plunged into total bankruptcy in 1976 by DOC clerk, Evelyn Salazar, appointed as "Trustee in Bankruptcy" and manipulated by DOC–paid private counsel Bruce Johnson. DOC counsel Biglow delights in Petitioner's struggle to find counsel with a few dollars from his disability pension. See Biglow's memo to Jim Warren, dated 11/17/92, found 4/16/93 at DOC MASC, attached to a Bergman pro–se MSPB motion. This memo is shown re–typed and original in the Appendix (E) and tells Jim Warren: "Motion to Compel from Bergman. He must have decided to skip making a request for discovery. By the way, he has un(an) attorney:Dawson Joyner–Boulder Colo. Where did he go to law school?"

Any court should be outraged at a DOC counsel's secret delight at this Petitioner's apparently hopeless struggle for justice against DOC and DOJ torts under self–demanded sovereign immunity.

Torts before US Supreme Court by DOJ Solicitor General Dr.Charles Fried's response to BERGMAN v. US, S.Ct.Case #85–44 was addressed by DOC Regional Counsel Niel Friedman who informed

Mr. Edgar A. Hubin on 4/25/88 that Bergman's action #87–F–1391 failed on 4/15/88 because "...even accepting Bergman's allegation of facts, his complaint failes to state a constitutional tort for which a remedy is available." This letter is shown re–typed for the court in Appendix (F). Bad faith pleadings to the US Supreme Court to achieve certiorary denial are addressed on pages 12 through 19 in Petitioner's S.Ct.Brief #89–1946. There were 9 counts listed. One example is where Solicitor General Dr. Charles Fried, reversed events in time by 1.4 years to mislead this court that Petitioner was awarded a part time GS–7 engineering position in July 1975 based on the corrections in his duty statements re–written by the CSC in November 1976. The deception here was to further support the Court of Claims that the erroneous PD's, used by DOC during the August 1973 RIF and before the Court of Claims between 1980 and 1982, were just harmless error and did not prejudice Petitioner. It requires no analysis to determine that a part time "paper job" scheduled for abolishment by DOC awarded by CSC FEAA in July 1975 resulted from an audit in November 1976 ,as pleaded by Dr.Fried.

Dr.Fried simply reversed the two events in time by 1.4 years with argument untrue on its face to deceive this Supreme Court. This is unconscionable. Furthermore, Dr.Fried's cite of a Court of Claims "finding" that Petitioner never filed a formal classification appeal while employed by DOC, supports an untrue opinion. Petitioner appealed both informally and formally to DOC, and was terminated in revenge according to "policy", see below. (1) CSC laws mandates agency to keep duty statements accurate and DOC Law Chief Hubin in Ct.Cl.Ex.#321, states confidentially:"...The accuracy of the position description is the foundation stone of the system, on which employment processes, RIF processes, promotion determinations, performance awards, training eligibility, and discipline actions will stand or fall..." (2) Petitioner filed a formal written appeal to correct his currently encumbered "physicist" position in June 1973 and in keeping with CSC documented agency policy (Ct.Cl.Ex.#109)--"you are out of a job if you request a position audit; keep your mouth shut, you have no right of appeal, don't make waves"--he was terminated on August 31,1973,with hearing of appeal denied. It simply "died" to

allow the agency to plead with false duty statements and false competitive levels. When agencies pay DOC officers like E.A.Hubin to ignore written congressional CSC laws under immunity, the laws are worthless.

EXHIBITS (A) THROUGH (F)

All exhibits (A) through (F) were discovered under FOIA request in the files of the DOC at the Mountain Administrative Support Center in Boulder Colorado on April 16, 1993. Other files requested were denied on ground of "Attorney–Client Work Product" confidentiality. A "Vaughn Index", a list of documents withheld, was denied. His appeals have been ignored. Petitioner submitted the cited documents to request oral argument in the Court of Appeals below, but was denied. The record had closed prior to 4/16/93.

THE PERJURED AFFIDAVIT OF EDGAR A HUBIN.

The perjured affidavit of DOC Personnel officer Edgar A. Hubin is dated 2/6/79. Mr. Hubin introduced this affidavit into evidence over petitioner's objections in the US Court of Claims in 1981.

Mr. Hubin "substantiated" his pleading under

oath in this affidavit of 8 pages and "Exhibit B", showing 41 registers of competitive levels with 67 abolished positions, claiming that all pertained to Petitioner's August 31, 1973 RIF.

THE AFFIDAVIT IS PERJURED BECAUSE::

1) Trial Judge Robert M.M. Seto of the US Court of Claims agreed in his 6/16/82 opinion, case #84–78, that Petitioner was the only employee affected by RIF on August 31st 1973. Therefore Mr. Hubin's 67 abolished positions shown on 41 pages of competitive levels submitted under oath cannot be true.

2) On September 2, 1980, in admitted Ct.Cl.Ex.#312, Joseph C. Brown, deputy Director for Personnel DOC Washington states for the Department: "There is no record of retention registers ITS for August 1973. My understanding is that they were not prepared for the RIF action affecting you as of this date.". Since no records existed, sworn 41 pages showing 67 abolished positions submitted to the US Court of Claims is perjured evidence.

Petitioner only claimed negligence. But Mr. Edgar A. Hubin claimed it to be intentional tort through DOJ attorney Nancy Rice making Mr. Hubin

immune through 28 USC #2680(h) and the late Judge Alfred A. Arraj awarded it, see BERGMAN v. US, 567 F.Supp.460 (D.Colo.1983). Citing from his opinion: (3) United States Key 78(5),140 "To the extent that the former government employee's claim against Government were founded on negligence theory, they were barred by the immunity retained under the Federal Tort Claims Act, because each of former employee's allegations of misconduct asserted a claim more properly described as an intentional tort that as negligence, and former employee could not circumvent the immunity for intentional torts by merely couching his complaint in terms of negligence. 28 USCA#2680(h)."

Conducting a RIF without records is against the law and violates 5 CFR #351.505 but the US Court of Claims was misled to rule this violation to be "HARMLESS ERROR". DOC denied Petitioner's request to inspect the records in 1973 and the Court of Claims denied Petitioner discovery of the records.

COURT OF APPEALS MISLED WITH UNTRUE PLEADING:

DOC counsel Beacham O. Brooker pleaded to

the US Court of Appeals for the Federal Circuit on September 30th 1982 that records of the competing employees were not required because, in Brooker's words "there were no competing employees". This is untrue because by definition "competing employees" are defined in 5 CFR #351.501(1973)"

(1) By group I, group II, group III;

(2) Within each group is subgroup A, subgroup B and

(3) Within each group begins with the earliest service date.

(b) Group I includes each career employee not serving a probationary period...

(c) Group II includes each employee serving a probationary period and each career employee in an obligated position...." Etc.

To plead that no such employees existed is untrue in fact and in law.

Brooker continued: "The review by the agency must be presumed to be correct unless bad faith is proven.. ...moreover the FEAA and BAR reviewed plaintiff's assignment rights exhaustively and found no fault with the agency... ...these decisions were supported by substantial evidence, were not arbitrary

or capricious and, thus should be final."

This is fraudulent because no such review ever took place as proven (1) by letter denying Petitioner retention registers and records as of August 31, 1973 (Ct/Cl.Ex.#218) and (2) by DOC in Ct.Cl.Ex.#312, of 09/02/80, which certified that the records required for this "review" were not prepared. Brooker invoked sovereign immunity in 1983 in Bergman V. US 567 F.Supp. 460 (D.Colo.1983), proving his bad faith.

THE ASSISTANT SECRETARY OF COMMERCE, ELSA A.PORTER AUDIT:

In Ct.Cl.EX. #305-3, dated 2/27/78, discovered under FOIA in 1980, Mrs Porter states "Dear Mr. Bergman: "...It is my conclusion that the reduction-in-force adversely affecting you in 1973 was unjustified and that, therefore, the ensuing actions requiring you to accept a position at a lower grade and salary were improper and should be corrected. Accordingly, I am directing the Office of Telecommunications to retroactively cancel the reduction-in-force action affecting you in August 1973..".

But DOC policy chief Joseph C. Brown instructed Mrs Porter as follows in Ct.Cl.Ex.#305-1

and #305–2: "Subject: Ralph R. Bergman : ...Cancellation of the RIF action as recommended above poses several difficulties which you should consider. If you say the RIF was unjustified, Mr. Bergman may ask "how" or "why." Any logical reason you give (e.g., he was in the wrong competitive level; he was on a erroneous job sheet; his qualifications were erroneously determined) opens up a broad avenue for further claims by not only Bergman but also others who were adversely affected in that same RIF. In other words, you cannot answer that particular question."

And Secretary Porter reacts and exclaims in Ct.Cl.Ex.#301, dated "2/28/78 :To Al Meiser From Elsa A. Porter (EAP): I would like to discuss this with you. Are there no alternatives? I would like to provide Bergman compensation for what I consider was an improper action on the part of Federal officials. The RIF was apparently proper, but it was the manner in which the appeal was handled that was improper. How do we provide justice in this case?"

This honorable court should not be misled to believe courts below that this was just error harmless

to Bergman. **THE LAW: A single violation of Civil Service RIF laws demands total RIF cancellation: Citing from RASMUSSEN v. US, Ct.Cl.# 121–75, 543 F.2d 134 at page 141:**

"[4] Because we have determined that the Board violated a procedural regulation to the plaintiff's detriment, we need not concern ourselves we need not resolve the issue of whether on the merits there was substantial evidence to support the Board's ultimate result. The major procedural lapse vitiated the Board's decision. This in turn invalidated the plaintiff's reduction–in–force since his assignment rights were an integral part of that reduction...".

"...Thus the failure of the significant procedural right means that the reduction–in–force cannot be enforced, CF. KOZAK v. UNITED STATES, supra. 458 F.2d 39, 198 Ct.Cl. 31 (1972); NEWMAN v. UNITED STATES, 143 Ct.Cl. 784, 798–99(1958); BAXTER v. UNITED STATES, 136 F.Supp. 747, 129 Ct.Cl. 254(1954) cert. denied, 350 US 936,76 S.Ct. 308, 100 L.Ed. 817 (1956); SIMON v. UNITED STATES,113 Ct.Cl. 183 (1949).

Alvin Rasmussen was an employee of DOC in Boulder Colorado and won his case against the same DOC Personnel Department that violated 5 CFR #351(1973) against this Petitioner where (1) no competing employee registers and records were prepared in Petitioner's August 31, 1973 RIF, violating 5 CFR #351.505. (2) His true date of retention standing under 5 CFR #351.506 was denied, (3) his assignments rights were denied, violating #351.701; 351–702; #351.703 and #351.704. (4) He was released from a wrong competitive level violating #351.601 and #351.602. DOC admitted under oath that it violated his reemployment rights under 5 CFR #351.502(1973)in 1974 to employ a "selected" candidate by changing duty statements specifically to preempt Petitioner's reemployment rights, see Ct.Cl.Ex.#184–6 where DOC Robert Frost states under oath to a CSC examiner:"...A direct alternative, in order to meet existing technical program needs, was to switch the vacancy to a Computer Specialist, a career field in which Bergman did not have re–employment rights, but Paul Williams did have GS–7 qualifications... ...The decision to switch the vacancy to that of a Computer Specialist

was taken from discussion between Derr, McNiece and myself. The PD was then written by McNiece–Derr, copy previously furnished to Mr. Anderson..."

It should be noted that the name of Dr.Vernon Derr appears on the DOJ Beacham O. Brooker Jr. "CONGRATULATIONS" memo of 09\30\83, Appendix Ex.(A) which was distributed by Edgar A.Hubin to NTIA Director Utlaut and others on 01/19/83 apparently to boast his brilliant successes against this Petitioner. Mr. Hubin invoked sovereign immunity later that year to protect him from the torts that fueled his "brilliance". "What a deal!".

PETITIONER ASKS HOW CAN ALL THESE VIOLATIONS CONSTITUTE "ERROR HARMLESS TO PLAINTIFF" AS RULED BY THE COURT OF CLAIMS IN 1982? IT IS IMPOSSIBLE.

OUTRAGE AND CONSTITUTIONAL TORT.

"OUTRAGE", attributed to Petitioner by the court below, was actually addressed by Judge Alfred A. Arraj of the US District Court in BERGMAN v. US 567 F.Supp.460 at 463,464 (D.Ct.Co.1983 in granting sovereign immunity to the various Federal officers:

"[4] In any event, plaintiff's allegations and

documentary evidence do not make out a claim of intentional infliction. In Colorado, that cause of action requires that the defendant's conduct be "outrageous", i.e.,"so extreme in degree as to go beyond all bounds of decency, and be regarded as atrocious, and utterly intolerable in a civilized community". Trimble V.Denver, 645 P.2d, 279,282(Colo.App.1981).:

Petitioner did not plead it in 1983 but with the discovery of documents on April 16th 1993, shown herein, now believes that all Federal action against his person were intentional constitutional torts which stand in total violation of RIF laws 5 CFR #351(1973) and therefore the citation applies. Petitioner's claim of constitutional violations to due process, liberty, equal justice etc. is not frivolous, without merit, and recreational litigation, as shown herein by Respondent's own documents and also Appendix exhibit #F where DOC Counsel Friedman himself certified that Bergman's action #87-F-1391 failed on April 15, 1988 because "...even accepting Bergman's allegation of facts, his complaint fails to state a constitutional tort for which a remedy is available...". Pro Se Petitioner cannot "lawyer" like DOC DOJ counsels.

THE COURT BELOW ERRED. RES JUDICATA DOES NOT APPLY TO PETITIONER.

Petitioner relies on 46 Am Jur 2d Section #473 FRAUD AND COLLUSION,:"In stating the doctrine of res judicata, the courts frequently refer to the fact that the judgement sought to be used as a basis for the application of the doctrine was generally without fraud and collusion, since it generally held that the principle of res judicata may not be invoked to sustain fraud, and that a judgement obtained by fraud or collusion may be not be used as a basis for the application of the doctrine of res judicata..."

Citing: 30A Am Jur Section #325 FRAUD AND COLLUSION states: "In reference to Res Judicata: "...The doctrine is to be applied in particular situations as justice and sound application of the policy behind the doctrine require; it is not to be applied so rigidly as to defeat the ends of justice or so as to work an injustice."

In RAY W. HALLORAN...v. THE BLUE and WHITE LIBERTY CAB Co. Inc., 92 N.W.2d 794 "The Supreme Court, Murphy, J., held where party intentionally misleads or deceives the court as to

identity of litigant and permits court to waste its time on trial of action against non-existing party, such conduct constitutes fraud upon court.

Same case under West Key # 576(3): "Principle of res judicata may not be invoked to sustain fraud and judgement obtained by fraud may not be used for application of that doctrine."

Same case under West Key #386(7), citing: Principle of laches must yield where reputation and integrity of court is at stake, and judgement may be set aside at any time for after-discovered fraud upon the court."

Same case: under "Syllabus by the Court":

(1) Where a court is misled as to material circumstances, or its process is abused, resulting in the rendition of a judgment which would not have been given if the whole conduct of the case had been fair, the court has inherent power to vacate the judgment for fraud and that power includes as well as the power to modify.

(2) Courts are established to decide actual questions existing between real parties involved in a real controversy and the submission of anything but

a real controversy is recognized judicially as a fraud upon the court."

Petitioner cites NEW YORK LIFE INSURANCE CO. V. NASHVILLE TRUST COMPANY et al. 292 S.W.2d 749. Under Judgment West Key # 511:
Fraud vitiates and avoids all human transactions, from solemn judgments of a court to a private contract, and is as odious and as fatal in a court of law as is in a court of equity."

It is not this petitioner who alleges violations of the law of the United States. The officers of the DOC and DOJ have done so themselves as proven by their own documents. Thus enforcing res–judicata in this case serves only to protect the documented RIF law violation by DOC and DOJ officer and fill the law books with bad law, while petitioner is deprived of true justice.

0SUPREME COURT AND OTHER RULINGS

The Supreme Court has stated that perjured, contrived or suppressed evidence favorable to a party is a violation of due process of law. Mooney v. Holohan, 294 U.S. 103 at 112, 55 S.Ct. 340 at 342, Brady v. State of Maryland, 373 U.S. 83 S.Ct. 1194

(1963). The issue is fair hearing and suppression of evidence violates fair hearing standards.In re Ferguson, 96 Cal.Rptr.595, 487 P.2d 1234 (1971). Failure to disclose testimony favorable to a defendant (plaintiff here) was a violation of fair hearing standards. People v. Rutherford, 121 Cal.Rptr.216, 534 P.2d 1341 (1975). In U.S. v. Bouziden, 108 F.Supp. 395(1952) the court noted that the purpose of a fair hearing is to enable the hearing officer to form an intelligent opinion, 108 F.Supp. 398. Where this information is withheld from a party at risk which affects the hearing, the hearing is a sham, U.S. v. Bouziden supra., also Gonzales v. U.S. 348 U.S. 407, 75 S.Ct.409 (1955) Crotty v. Kelley, 443 F.2d 214(5th Cir. 1971);, Rasmussen v. U.S., 543 F.2d 134, 211 Ct.Cl. 260(1976).

IS PETITIONER FRIVOLOUS?

NO. HE IS NOT FRIVOLOUS. All his proofs of 5 CFR #351(1973) law violations are Respondent's alone. All pleading demanding 28 USC #2680(h) sovereign immunity are Respondent's alone. The lead-off-case, cited by DOC and referenced by the court below is

Simmons v. Poppell, 837 F.2d 1243, 1582 (5th Cir.1988). It is the substance of the legal argument that Petitioner is frivolous. Simmons, a prison inmate sued informa pauperis that three prison officials did not adequately investigate removal of a radio from his cell by another prison official. The court correctly found that his case was frivolous, citing Clark v. Green ,814 F.2d 221,223 (5th Cir. 1987) in stating "such (pro-se) litigants "are not granted unrestrained license to pursue totally frivolous appeals "".Id at 223 and awarded costs of $75. The court below in BERGMAN, cited this finding against this petitioner.

There is no comparison between SIMMONDS AND BERGMAN who lost two homes to capricious agency RIF actions in 1968 and 1973. One for these homes currently sold in excess of $400,000,00. He lost two golf course building sites that were valued at $100,000,00 each before buildings were put on. BERGMAN further lost backpay in the agency prosecuted bankruptcy and all items to which he was entitled under bankruptcy law, his career, his health.

As noted above, DOC counsel Niel Friedman tells DOC Law Chief Edgar A Hubin triumphantly

"...Bergman's action #87–F–1391 (DOC tort before the US Supreme Court) failed on 4/15/88 because "even accepting Bergman's allegation of facts, his complaint fails to state a constitutional tort for which a remedy is available...", and Friedman continues stating that Bergman is now out of time to file such a constitutional tort claim, see App.Ex.#F. Thus tort before the US Supreme Court seems to be perfectly acceptable practice for Respondent to win at any price. Petitioner made an error in not charging Respondent with constitutional tort before the US Supreme Court, but just fraud on the US Supreme Court. The issue remains whether the US Supreme Court will tolerate Respondent having argued in fraud with false facts to mislead the Honorable Judges of the US Supreme Court. It should not be permitted.

To use SIMMONDS applicable to BERGMAN is irrational on its face, as are the other cases cited by Respondent. None address the conduct of the agency that capriciously and arbitrarily violated United States Civil Service Law, destroyed Petitioner's career and drove him into total ruin. NO RATIONAL PERSON CAN EQUATE OR CORRELATE. For Respondent to

cite cases just because someone was found to be frivolous in his appeals, is cheap "lawyering", and this is frivolous, since Respondent's pleadings are not supported by true facts, and his pleadings are opposed by his own documents. All that is left for him now is to attack Petitioner's character.

REASON FOR GRANTING THE WRIT

This writ should be granted because it supports LAW, TRUTH and UNDISPUTED FACT versus misuse of ASSUMPTION OF TRUTH, protected by SOVEREIGN IMMUNITY, because of (1) agency greed to defeat an unlawfully ruined citizen at any price; (2) federal glee, having won control of courts through "lawyering" untruths; (3) DOC mockery and ridicule of a ruined citizen where his pain and suffering has become "FOR YOUR READING PLEASURE" to DOC lawyer William A. Biglow, (4) where his defeat by federal torts under sovereign immunity is celebrated with "CONGRATULATIONS" by DOJ lawyer Beacham O. Brooker, (5) where successful fraud on US courts is circulated under "EYES ONLY" caution by DOC Law Chief Edgar A.Hubin.(see DOC, DOJ documents discovered April 16 1993 and shown in Appendix), (6)

where fairness, honor, truth are abandoned and DOC lawyer Niel Friedman finds successful tort on the Supreme Court of the United States acceptable. As a public servant, he is held to a higher state of morality and his duty would have been to correct this terrible conduct of his agency. But he wanted to keep his job. (7) where law, truth, and undisputed fact is obfuscated through misuse of "assumption of truth" protected by self-invoked sovereign immunity; (8) where the Constitution of the United States has been attacked and Petitioner's 5th and 14th amendment rights were trampled into dust,and (9) Where Respondent, having successfully misled the US Court of Claims to reach an opinion not based on fact or law, keeps using this void opinion as the base to win further opinions against Petitioner. This violates all constitutional principles of equal justice.

CONCLUSION

To apply RES JUDICATA to Petitioner's lawful struggle for justice under to the laws of the United States would be a gross miscarriage of justice and a severe blow to the judicial process of this great nation. To certify Petitioner's efforts "without merit",

"obstinate", "frivolous" and "wasting precious resources" is without foundation in fact or law in light of the undisputed facts certified by the DOC and DOJ in their own documents. Such adjectives, submitted to any court by DOC and DOJ lawyers, are a mere reflection of those that wish to perpetuate their own follies to the detriment of this Petitioner and the law of the land.

If held true, then Respondent's admissions:"Bergman Shafted";"He was misclassified";"We misled appeals FEAA ARB Authorities";"Competing employee records not prepared"; "Bergman GS–11 Engineer qualification withheld from FEAA ARB;" Let's award "paper Job" scheduled for abolishment";"Request position audit and you lose your job, shut up, you have no right of appeal, don't make waves";"Bergman must prove that his assignment rights greater on August 31, 1973, when terminated, then on June 30th 1973––An impossible task––Catch 22––since we learn 7 years later under FOIA that no records existed in 1973 with which to make this determination (Ct.Cl.Ex.#312); are all lawful proper enforcement of RIF, and represent

the congressional intent in writing 5 CFR #351(1973).

To all of this, the Court below was persuaded to state that Petitioner has had justice. What justice, where? It states that "Petitioner has failed to support, with creditable substantial evidence any of his multiple charges of unethical or criminal conduct by government counsel. These repeated charges have been forcefully rejected by every court to which they have been directed."

Not true. Fraud on the Supreme Court was rejected because 1) Petitioner failed to claim "CONSTITUTIONAL TORT" according to DOC Counsel Friedman, (2) because he apparently failed to exhaust administrative remedies and (3) because Judge Finesilver of Colorado District Court also advised that the DOJ officer Fried, accused of inadvertent fraud on the Supreme Court, was sovereignly immune. Petitioner asks: "What are the administrative remedies for fraud on the US Supreme Court? Are there any?". Petitioner has tried to use S.Ct.Rule #8 in this matter but the filing was rejected in the office of the clerk before it reached the Justices of the Supreme Court.

For inadvertent fraud on the Court of Claims

and the Court of Appeals for the Federal Circuit, claimed by Petitioner, DOC Edgar A. Hubin, DOC Joseph C, Brown and DOJ counsel Beacham O. Brooker Jr. pleaded to intentional tort and were awarded sovereign immunity by the Colorado District Court in 1983. Thus the cases could not be heard on it's merits. Is this a "forceful rejection of the merits of Petitioner's claim?" NO! In the Court of Claims, Judge Robert Seto ruled in 1982 that he had no jurisdiction to consider torts, as demanded by DOJ counsel Brooker. Petitioner did claim perjury of Edgar A. Hubin during trial, but Respondent requested and got a "PROTECTIVE ORDER", so it was not addressed. Petitioner did not claim tort in the Ct.Cl., but claimed that Respondent's RIF action was arbitrary and capricious. His argument was cut secretly from the record. Is that forceful rejection by the Court of Claims? NO!

Did Judge Alfred A. Arraj of the D.Ct.Colo. reject that he first awarded sovereign immunity to Federal Officers for misleading the Court of Claims and the court above and then based his dismissal of Petitioner's privacy act record correction case on the

void 1982 Court of Claims opinion? NO! He said it raised a substantial question. Nothing can change these facts. The Appeal Court below here was again misled by Respondent's pleading. To invoke res–judicata here, would enforce a void opinion of the Court of Claims, a court misled to certify prime violations of 5 CFR #351(1973) as "ERRORS HARMLESS TO PLAINTIFF while Federal officers invoked sovereign immunity and amused themselves and rejoiced at Petitioner's plight and suffering. This Honorable Court should not reward such practices. Pleading false facts to mislead this Supreme Court, as was done by Respondent's Charles Fried in BERGMAN v. US S.Ct.case #85–44 attacks the honor of the US Supreme Court and the Constitution.

This Honorable Court was not swayed by lower court findings of "frivolous" in the past. In Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics U.S. D.Ct. Eastern District of New York, Memorandum and order R 66–75, No.67–C–655 Nov. 24th, 1967 the Honorable Judge Walter Bruchhausen stated on page 40;" The Court adheres to its prior ruling, dismissing the complaint on the merits. Under

the circumstances, an appeal would be frivolous. The Court certifies that the appeal is not taken in good faith. Accordingly, the motion for leave to appeal in forma pauperis is denied. It is so ordered. A copy hereof is being mailed to plaintiff."

But the case did not end there. Mr. Bivens was awarded the able assistance of skilled counsel Mr. Stephen Grant, who was assisted with a Brief of Amicus Curiae from the American Civil Liberties Union, filed September 21 1970. Mr. Bivens was granted certiorari and won his case before the Supreme Court in case #301 October 1970 term, BIVENS supra.403 US 388, 29 LEd 2nd 619, 91 S Ct.at 1999.

THIS PETITIONER HAS NO HELP AND STANDS ALONE. The very agency personnel department, whose function is to help employees in pursuit of law mandated by 5 CFR #351 and the DOC Personnel Manual, here is an adversary, supported by a myriad of DOC and DOJ lawyers to enforce the self-confessed violations of the very laws the personnel department is supposed to uphold.
If res-judicata is enforced here, it voids prior

rulings of the US Supreme Court that bar application of res-judicata when opinions are obtained through bad faith. The record is full of agency bad faith before the CSC FEAA and the courts below. Res-judicata here, would signal other agencies 5 CFR #351 need not be observed and that untruths before the Supreme Court of the United States is acceptable practice protected by sovereign immunity. That is intolerable.

CONCLUSION

The ruling of the Court below of August 20th 1993 is in substantial error. Petitioner's position is based solely on the documented admissions of the Respondent. He is neither frivolous nor obstinate, nor does he engage in 'recreations litigation', but he fights for adherence of the law. That is his constitutional right and it should be upheld by the US Supreme Court. All of Respondent's documented admissions constitute substantial violations of US Civil Service laws regarding reduction-in-force. Pleading prima facie false facts to appeals authorities and courts is not lawful litigation--regardless how described, and violates due process and requires RIF cancellation, RASMUSSEN supra.

Passing on pleadings in bad faith under "EYES ONLY" caution memos to the DOC agency director Utlaut to create deniability of knowledge for the recipient is not lawful practice for agencies to follow.To recommend Petitioner's struggle for justice under the laws of the United States "for your reading pleasure, another appeal by Bergman", as done by DOC lawyer William A. Biglow to MASC officer Jim Warren under MASC Law Chief Edgar A. Hubin, is despicable, as is Biglow's ridicule of Petitioner's efforts to get legal help. He is well paid by the taxpayer for this "work". Is this court proud of it's DOC MASC Law Chief Edgar A. Hubin? Surely this Honorable Court will not support such acts of Federal officers that hold office under a higher standard of ethics and morals then ascribed to private sector lawyers.

THE FINDINGS OF THE COURT BELOW ARE IN SUBSTANTIAL ERROR AND MUST BE REVERSED. RES JUDICATA IN "BERGMAN" IS INAPPROPRIATE AND MUST BE REVERSED IN THE INTEREST OF SUBSTANTIAL JUSTICE UNDER THE CONSTITUTION OF THE UNITED STATES.

PRAYER FOR RELIEF

Petitioner prays that this Great and Honorable Court will not allow Respondent's self–certified violations of U.S.law to be rewarded again, but that it will look at this case from the view that any reasonable person would have, given the uncontested law violation in Respondent's own documents, and his ridicule and amusement at Petitioner's suffering. Is that current US Government policy? Petitioner prays that this Honorable Court grant the requested writ and provide any other relief it deems appropriate here to make this citizen whole under Civil Service Law in the interest of substantial justice.

IN THE ALTERNATIVE:

Petitioner prays that this Honorable Court provide true justice under the Constitution of the United States by ordering the capricious and arbitrary Reduction–In–Force action of August 31, 1973 against Petitioner canceled and that Petitioner be made whole as provided by Law. Respectfully submitted

Ralph Roger Bergman, pro–se. 750 30th Street
Boulder Colorado 80303. Tel: 303–443–8964

APPENDIX

In The

Supreme Court of the United States

October Term, 1993

RALPH ROGER BERGMAN

Petitioner,

vs.

UNITED STATES OF AMERICA

Respondent.

APPENDIX CONTENT

Court Opinion Below -- -- -- op1

Opinion of the MSPB -- -- -- op11

DOJ Brooker"CONGRATULATIONS!" Appdx.A

Edgar A. Hubin "EYES ONLY" Appdx.B, C

DOC Biglow"for your reading pleasure" Appdx.D

and "where did he go to law school"? Appdx.E

DOC Friedman: "his complaint failed to state a constitutional tort for which a

remedy is available." -- -- Appdx.F

Court of Claims exhibits by number: Appdx.G

Exhibits referenced were determined by the Court of Claims to be errors harmless to Petitioner or beyond Court jurisdiction.

5 C.F.R.#351(1973 Law Violations admitted by DOC in these documents:

Secretary E.A.Porter:Smith letter deliberately deceptive to mislead appellate office -- -- #82

Notes of DOC J.C.Brown dated 7/22/75 Offer "Paper Job" slated for abolishment, then a new RIF #84

CSC DOC AUDIT 1974: You will be "out of job" if you request a position audit, keep mouth shut, no right of appeal, don't make "waves". -- #109

DOC J.C.Brown:"Bergman positions misclassified, His engineering skills were erroneously determined; We misled FEAA/ARB, Agency conceeds; #300

DOC J.C.Brown:"No record of retention registers for ITS for your August 1973 RIF...They were not prepared" -- -- -- -- -- #312

DOC J.C.Brown:" No record submitting 5/2/75 Eames qualification determination (#375) found #312

DOC Law Chief Edgar A.Hubin

"Confidential". CSC audit found in favor of Bergman. His PD's were inaccurate -- -- #321

CSC Commisoner E.Poston: New evidence found showed Bergman was"shafted"-- -- #335

DOC J.C.Brown: Eames GS-11 Engineer Qualification Determination of 5/2/75(see #312)-- -- #375

DOC Secretary E.A.Porter: We acted improperly. How do we provide justice?-- -- -- #301

OPINION BELOW

US Court of Appeals for the Federal Circuit, August 20th 1993 NIES,

Ralph R Bergman, Petitioner v. Department of Commerce, Respondent.

Chief Judge Bennett, Senior Circuit Judge and Newman, Circuit Judge.

Bennett, Senior Circuit Judge.

OPINION:

Petitioner, Ralph R. Bergman, appeals from the decision of the Merit System Protection Board (MSPB or board), No. DE035192016421, dated June 2,1992, dismissing his petition for review upon the grounds that it was barred by the doctrine of res-judicata and lacked evidence or argument meeting the criteria for reopening or considering a prior decision.We affirm.

BACKGROUND:

In October 1962, petitioner was hired as a physicist by the National Bureau of Standard (Bureau), a constituent agency of the Department of Commerce. Through a reduction-in-force (RIF), he was separated from federal service on February 12, 1968. Petitioner

sought review of the RIF before the Civil Service Commission (CSC), but on March 29,1968, the CSC sustained the agency's actions.Petitioner then unsuccessfully appealed that decision to the CSC Board of Appeals and Review.

In October 1968, Petitioner was rehired by the Bureau for reasons unrelated to his appeal. On July 31, 1973, petitioner was informed that his position would be abolished as a result of reorganization. Petitioner was again separated from federal employment and ultimately filed an action with the CSC. In July 1975 the CSC rejected petitioner's argument; however the CSC Board of Appeals and Review rescinded and remanded the action to the Federal Employee Appeals Authority (FEAA) for further consideration.

On August 12, 1975, as a result of the FEAA review, petitioner was offered and accepted a position as an electronic engineer.Despite his new position, Mr. Bergman continued to petitioner the CSC regional office seeking review of its previous adverse decisions.This prompted a "special enquiry" by the CSC which concluded that petitioner's position descriptions were overly broad and recommended

that more accurate descriptions be included in his personnel file to ensure better documentation of his prior duties.

Petitioner was apparently sufficiently encouraged by the results of the "special" inquiry" to further challenge his 1973 separation. This challenge proved futile when,on February 24, 1977, petitioner was informed by the CSC appeals authority that the issues raised had been fully considered and discussed in the 1975 decision of the Board of Appeals and Review and in the absence of any showing of new and material evidence not available prior to that decision, the prior CSC Board of Appeals and Review ruling would stand. Petitioner's request to reopen the case was denied.

Dissatisfied with the results of his administrative appeals, petitioner resumed his judicial appeals in the United States Court of Claims in 1982. That court addressed petitioner's multiple claims in a 46 page, single-spaced opinion and dismissed them all,concluding that his claims covering the 1968 RIF were barred by the 6-year statute of limitation and claims concerning the other issues were without merit.

Petitioner's claims for reinstatement,classification of records, perjury, misrepresentation by government employees, violation of various statute and regulations,negligence, and collusion of government employees, emotional distress,fraud, deceit, slander, "robbery of rights to due process and equal protection under the Constitution, " and "the common tort outrage against him" were raised in whole or part by petitioner more that once in the Court of Claims, and in the United States District Court for Colorado and the District of Columbia, and in the United States Circuit Court of Appeals for the Tenth and District Court of Columbia Circuits, as well as the Federal Circuit, all of which were denied on the merits or dismissed on legal grounds, including res-judicata. Rehearings have been denied twice, once by the court and once by the United States Supreme Court. In addition, certiorari has been denied twice. 464 U.S.825 (1983); 490 1036 (1989).

Petitioner now alleges that he was improperly removed from his positions with the United States Department of Commerce in February 1968 and August 1973 reductions-in-force and that his

disability retirement on March 16, 1977 was coerced His claims were considered by an administrative judge (AJ) in the Denver Regional Office of the MSPB. The AJ noted that petitioner's claims had previously been adjudicated by bother the Civil Service Commission and the United States Court and were later affirmed by this court.Bergman v. United States, slip op.at 20 (Ct.Cl.June 16,1982,affd, 707 F.2d 319 (Fed.Cir.), cert.denied,464 U.S. 825 (1983), reh'g denied, No.88-1402 (Ct.Cl.Mar.3 1988),affe'd, 865 F.2d 268 (Fed.Cir.188), cert.denied, 490 U.S. 912 (1989).When, as noted above, petitioner's efforts to have the MSPB review the initial decision failed on June 2, 1992, petitioner filed the present appeal before this court.

The foregoing brief summary of petitioner's attempts for redress is not intended to be complete but is intended to illustrate how diligent and determined he has bee to find some agency or court that would agree with him. He believes that no authority has appreciated the legal wrong done to him or has given the relief demanded, which he says is his due in fact and law. In pursuit of what he believes would be justice, he does not seem to realize

that he has had justice. He rejects of res-judicata stating that the doctrine is inapplicable because of the fraud, deceit, and perjury by government attorneys designed to stifle inquiry into the reductions-in-force in 1968 and 1973 and the circumstances of his retirement. He has failed to support, with creditable substantial evidence any of his multiple charges of unethical or criminal conduct by government counsel. These repeated charges have been forcefully rejected by every court to which they have been directed.

This court has raised the question of its jurisdiction of the present appeal since the actions appealed occurred before January 1, 1979, the effective date of the Civil Service Reform Act of 1978(CSRA), Pub.L.No.95-454,92 Stat. 1111 (1978. The CSRA established the Merit Systems Protection Board. The Federal Courts Improvement Act(FIA), effective October 1, 1982, gave the Federal Circuit exclusive jurisdiction of final orders or decisions of the Merit System Protection Board. 28 U.S,C. #1295(a)(3), (9)(1988). As previously noted, the present appeal is from a final decision of the MSPB. The question of

what forum should review the challenged decision can be resolved by attention to the savings clause of the CSRA, the regulation interpreting it, and the FCIA. The CSRA's savings clause states:

(No provision of this act shall affect any administrative proceeding pending at the time such provision takes effect. Orders shall be issued in such proceedings and appeals shall be taken therefore as if this act had not been enacted. Pub.L.No. 95-454, #902(b), 92 Stat. 1224 codified at 5 U.S.C. #1101 note (1988)).

The board's regulation implementing this clause provides further:

No provision of the Civil Service Reform Act shall be applied by the Board in such a way as to affect any administrative proceeding pending at the effective date of such provision. "Pending" is considered to encompass existing agency proceedings, and appeals before the Board or its predecessor agencies, that were subject to judicial review on January 11, 1979, the date on which the Act became effective. A.agency proceeding is considered to exist once the employee has received notice of the proposed action. 5 C.F.R.

#1201.191(a)(2)(1993).

On the basis of the above provisions, respondent argues that Mr. Bergman's right to petition this court for appellate review depends whether he had some administrative or judicial proceeding regarding the challenged actions at issue here "pending" on January 11, 1979. If so, we would then lack jurisdiction. Judicial review was ongoing before the Court of Claims because that court did not decide petitioner's March 13, 1978 appeal of his RIF's until June 16th, 1982 and then the 1968 claim was barred by the statute of limitations and the other claims failed on their merits. Therefore we have no jurisdiction over Mr. Bergman's RIF related claims. Mr. Bergman;s appeal of alleged coerced retirement in 1977 was not appealed to the CSC before it was abolished by the CSRA so it was not "pending" when CSRA became effective on January 11, 1979. We have no jurisdiction over his disability retirement claims which he now seeks to validate before the MSPB, having failed to do so in multiple judicial and administrative actions. We reach only those claims in the present appeal for which we do have exclusive jurisdiction under the

Federal Courts Improvement Act at 5 U.S.C.#7703.

We have considered that petitioner is a pro-se litigant and that allowances can be made for lack of understanding of proper legal procedure, but this is not "unrestrained license to persue totally frivolous appeals." Simmons v. Poppell, 837 F.2d 1243, 1582 (5th Cir.1988); Finch v. Hughes Aircraft Co., 926 F 2d 1574,1582 (Fed.Cir.1991). There are many cases that can be cited to support the proposition that Mr. Bergman's obstinate behavior is what the courts refuse to tolerate even by pro-se litigants. "The unescapable conclusion is that (petitioner) is engaged on this appeal in 'recreational' litigation, misusing precious and limited resources better spent on claims of his fellow citizens to whom those resources belong. The present appeal is frivolous."Beachboard v. United States, 727 F.2d 1095 (Fed.Cir.1984); see, McEnery Sys.Protection Bd. , 963 F.2d 1512, 1516-17(Fed.Cir.1992); Asberry v. United States Postal Service., 692 F.2d 1378, 1382 (F.2d 1378, 1382(Fed.Cir.1982)

CONCLUSION

In consideration of the foregoing, the Clerk of

this court is directed not to file further papers by or on behalf of Ralph R. Bergman without first referring them to a judge of the court who will determine whether the same claims have been adjudged before and if so will reject them for filing. Respondent may comment on the proposed filing at the judge's discretion. The decision of the Merit System Protection Board is AFFIRMED.

Op11

APPENDIX

OPINION OF THE MERIT SYSTEM PROTECTION BOARD.

UNITED STATES OF AMERICA MERIT SYSTEM PROTECTION BOARD DENVER REGIONAL OFFICE

Ralph R Bergman, Appellant

v

Department of Commerce, Agency.

Docket Number DEO35192016321-2-1

Date: June 2 1992

Ralph R. Bergman, Boulder Colorado, pro-se.

William A. Biglow, Esquire, Washington D.C., for the agency.

BEFORE Daniel R. Levinson, Chairman; Antonio C. Amador, Vice Chairman;Jessica L. Parks, Member.

ORDER

The Board has fully considered the appellant's request to reopen and reconsider the decision of the Denver Regional Office issued on February 12, 1992. The

regulations governing the adjudication of the appellant's case 5 C.F.R.##772.310 and 772.312 (1978),set forth the regulatory criteria for reopening the previous decision of an Appeals Officer. Under those regulations the party requesting reopening and reconsideration must submit written evidence or argument which tends to meet one or more of the following regulatory criteria.

The Board finds that the appellant's request does not meet any of the above regulatory criteria and therefore the request to reopen is DENIED, and that decision remains the final decision in this matter.

There is no further right of administrative appeal in this matter. There is no further right of administrative appeal from a decision of the Merit Protection Board on a request for reopening. This case is considered to be closed by the Board since all administrative appeal rights have been exhausted. Any further remedy concerning this case lies in the Federal court system.

FOR THE BOARD: Robert E. Taylor, Clerk of the Board. Washington D.C.

EXHIBIT (A)

Routing And Transmital Slip 1–12–83

Mr.Edgar A. Hubin

Chief Personnel Services

Department of Commerce

Institute for Telecommunication Sciences

Boulder Colorado

CONGRATULATIONS!

E.A.H. 1–19–83 ------ cc: Bill Utlaut, NTIA/ITS

cc: George Havenner, NOAA

OK(w) 1–21 cc: Joe Brown, DOC

cc: A Rtg

cc: Kent Gromeyer(?)

Vernon Derr

George Ludwig(?)

Name,Org.Symbol,Agency/Post

Beachm O. Brooker, Jr. Room No. 700A Todd

Phone 724–7257

(see original on reverse of this page)

EXHIBIT (A)

ROUTING AND TRANSMITTAL SLIP 1-12-83

: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
Mr. Edgar A. Habib		
Chief Personnel Services		
Department of Commerce		
Institute for Telecommunication Sciences		
Boulder, Colorado		

ction		File		Note and Return	
pproval		For Clearance		Per Conversation	
s Requested		For Correction		Prepare Reply	
rculate	✓	For Your Information		See Me	
mment		Investigate		Signature	
ordination		Justify			

ARKS

Congratulations!

1-19-83 cc: Bill Utlaut, NTIA/ITS
cc: George Haverman, NOAA
cc: Joe Brenn, DOC
cc: A Rtg
cc: Kent Crammer, Vern Derr, George Ludwig

DT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

(Name, org. symbol, Agency/Post)	Room No.—Bldg.
Leslie O. Brooker, Jr	700A Todd
	Phone No. 724-3257

EXHIBIT (B)

Routing And Transmittal Slip 9–30–82

Mr. Edgar A. Hubin

Chief, Personnel Services

Department of Commerce

Institute of Telecommunication Sciences

Boulder Colorado 80303

#For Your Information

6–21–84 EYES ONLY

EAH----------cc Bill Utlaut

Done 6–27 EAH

Im' not sure I sent a

copy of this to you earlier.

Came across it recently.

FROM: Beach Brooker 785 Todd.

(See original on reverse side) Clarification by Petitioner: This memo originated with DOJ Beacham O Brooker on 9–30–82 and was attached to his pleading to Ct.App.Fed.Cir. dated 9–30–82, a fraudulent submission for which Brooker invoked sovereign immunity. It was sent on "EYES ONLY" to ITS Director Dr.William Utlaut on 6–21–84 because the fraud was obvious.

EXHIBIT (B)

ROUTING AND TRANSMITTAL SLIP 9-30-82

TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
Mr. Edgar A. Hubin		
Chief Personnel Services		
Department of Commerce		
Institute of Telecommunications Sciences		
Boulder, Colorado 80303		

Action		File		Note and Return	
Approval		For Clearance		Per Conversation	
As Requested		For Correction		Prepare Reply	
Circulate		For Your Information		See Me	
Comment		Investigate		Signature	
Coordination		Justify			

REMARKS

Eyes Only

6-21-84 → cc Bill Utland

I'm not sure I sent a copy of this to you earlier. Came across it recently

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)	Room No.—Bldg.
Jack Brooks	7B Todd
	Phone No.

EXHIBIT (C)

Inter–Office Memo (EYES ONLY)

To: Bill Utlaut Director ITS

From: W.A.Hubin Personnel Services

Subject: Bergman Appeal/Court Case 4–20–82

I though you might find Bergman's latest motion of interest. While adequate p.d's & proper classification are important, the cited case is not a parallel for the reasons identified by me in the left margin of the 2nd page.Our attorney (Brooker) agrees and will so argue– in addition to the argument that this decision should have only future precedent Signed EAH.

Note by Petitioner: THE PERSONAL VENDETTA OF EDGAR A.HUBIN TO DESTROY PETITIONER"S CAREER AT ANY PRICE, FOIA discovered 04/16/93. DOC Law Chief Edgar A Hubin references Petitioner's pleading to Ct.Cl. in MSPB case # DC 03518210311,Feb.26,1982 Juliette N. Lester v. Department of Education which states:"A RIF CANNOT TAKE PLACE UNTIL EMPLOYEES ARE ON ACCURATELY CLASSIFIED POSITION DESCRIPTIONS." Mr. Booker did as ordered by the DOC Law Chief and persuaded the court that "THIS WAS ERROR HARMLESS TO PETITIONER. DOC personnel law Chief Hubin wins against the personnel he is sworn to protect. Brooker and Hubin invoked 28 USC #2680(h) in 1983 by pleading intentional tort.Here he boasts his efforts to his boss Dr.Utlaut.

EXHIBIT (D)

US Department of Commerce BERGMAN

3/24/92

To: Jim Warren

MASC

From: Bill Biglow

For your reading pleasure, another appeal by Mr. Bergman. Our response is due on 4/14/92

(Copy of original memo appears on reverse side)

EXHIBIT (D) U.S. DEPARTMENT OF COMMERCE

Bergman Ex 4

3/24/92

To : Jim Warren
MASC

From: Bill Biglow

For your reading pleasure, another appeal by Mr. Bergman. Our Response is due on 4/14/92.

EXHIBIT (E)

US Department of Commerce

1/17/92

To: Jim Warren Jim Warren

MASC

From: Bill Biglow

Motion to Compel from Bergman. He must have decided to skip making a request for discovery. By the way, he has an attorney: Dawson Joyner– Boulder,Colo.

Where did he go to law school?

(Copy of original appears on reverse side)

Clarification note by Petitioner: A motion for discovery was made, but ignored by MSPB.

EXHIBIT (E)

U.S. DEPARTMENT OF COMMERCE

11/17/92

To : Jim Warren Jim Warren

From: Bill Bigelow

Motion to Compel from Bergman. He must have decided to skip making a request for discovery. By the way, he has an attorney:

Dawson Joyner. - Boulder, Colo.

Where did he go to law school?

EXHIBIT (F)

General Counsel of the US Department of Commerce,
Washington DC 20230
325 Broadway, Boulder Co. 80303
April 25, 1988

MEMORANDUM FOR: E.A.Hubin, Chief Personnel Law Division Mountain States Administrative Support Center
FROM: Niel D. Friedman, Regional Counsel NDF
SUBJECT: Ralph Roger Bergman, Civil Action No.87–F–1391 (D.Colo.)

In his attached decision of April 15, Chief Judge Sherman G. Finesilver dismissed the above–referenced, $2 million suit in its entirety. The suit against all named individuals (including you) is dismissed because, even accepting Bergman's allegations of facts, his complaint fails to state a constitutional tort for which a remedy is available. The suit against the Government is dismissed because Bergman failed to exhaust his administrative remedies.

Tenacious as he is, Bergman may file a Federal Tort

Exhibit (F) continued:

Claims Act claim with the office of the General Counsel.I strongly doubt that such a claim would even receive consideration on its merits because the time limit for filing a claim under the Act, two years from the date of the injury, has long past.

Attachment.

EXHIBIT (G) Ct.Cl.Ex.#301

US DEPARTMENT OF COMMERCE

2/28/78

To: Al Meiser

From: Elsa A. Porter EAP

I would like to discuss this action with you.

Are there no alternatives? I would like to provide Bergman compensation for what I consider was an improper action on the part of Federal official. The RIF was apparently proper, but it was the manner in which it was handled that was improper.

How do we provide justice in this case?

(Copy of original appears on reverse side)
Clarification by Petitioner: This memo was written after a Secretarial Audit by the Assistant Secretary of Commerce for Administration, the Honorable Mrs Elsa A. Porter. The Court of Claims was persuaded by DOJ Counsel Beacham O. Brooker to hold this as "Error Harmless to Plaintiff". Mr. Brooker invoked sovereign immunity, claiming intentional tort.

EXHIBIT (G)

U.S. DEPARTMENT OF COMM

2/28/78

To: Al Meisner

From: Elsa A. Porter EAP

I would like to discuss this action with you.

Are there no alternatives? I would like to provide Bergman compensation for what I consider was an improper action on the part of Federal officials. The RIF was apparently proper, but it was the manner in which the appeal was handled that was improper.

How do we provide justice in this case?

BEST AVAILABLE COPY

(2)

Supreme Court, U.S.
F I L E D
JAN 30 1994
OFFICE OF THE CLERK

No. 93-0969

In The

Supreme Court of the United States

October Term, 1993

RALPH ROGER BERGMAN

Petitioner,

vs.

UNITED STATES OF AMERICA

Respondent.

To The United States Court Of Appeals For The Federal Circuit

REPLY UNDER RULE 15.6 TO RESPONDENT'S WAIVER WITH SUGGESTION TO THE COURT TO REQUEST A RESPONSE

By: RALPH ROGER BERGMAN
Appearing Pro-Se
750 30th Street
Boulder, Colorado
80303
Tel: 303-443-8964

17 pp

SUPREME COURT OF THE UNITED STATES

October Term 1993; No:93–969

RALPH ROGER BERGMAN

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

To The United States Court of Appeals For The Federal Circuit

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REPLY UNDER RULE 15.6 TO RESPONDENT'S WAIVER WITH SUGGESTION TO THE COURT TO REQUEST A RESPONSE.

TABLE OF AUTHORITIES:	Page Number
28 U.S.C.#2680(h)	3,15
CASES REFERENCED:	
Bergman v. U.S. S.Ct.#85–44	2,6
Bergman v. U.S. S.Ct.#89–1946	2
Bergman v. U.S. 567 F.Supp.460(1983)	3,4
Bergman v. U.S.87–F–1391(D.Co.1988)	3
Ray W. Holloran v. Blue + White Liberty Cab Co. Inc. 92 N.W. 2d 794(1958)	5
Waiver by Solicitor General	16

REPLY: On January 19, 1994, Respondent filed a "WAIVER" to respond to Petitioner's brief unless requested to do so by the court. This is Petitioner's suggestion to the court to request such a response in light of the seriousness of the case presented which includes factual proof of Respondent's prior fraud on the Supreme Court of the United States in BERGMAN V.US, S.Ct. #85–44 and on courts below. While Respondent is lavish in berating Petitioner, branding him "frivolous"," "engaging in recreational litigation", "without merit", etc., he refuses to respond to his own proofs to the contrary. So he pleads for dismissals using sophistry in bad faith in order not to have to respond and he invokes sovereign immunity for his torts since a response risks that he must concede his prior frauds on this court and courts below.

Although informed, courts below seem to ignore Respondent's documented bad faith, which DOC Counsel William A.Biglow currently protects by further misusing "assumption of truth" under sovereign immunity, the U.S.Supreme Court must never ignore Respondent's fraud on the US Supreme Court Justices in BERGMAN v.US, S.Ct.#85–44, cited in "BERGMAN" S.Ct.#89–1946, further proven below.

Respondent also ignored Petitioner's documented charge of fraud on the US Supreme Court in BERGMAN v. US, #87–F–1391(D.Colo.1988) where he achieved dismissal, charging Petitioner with "failure to exhaust administrative remedies" and by invoking 28 U.S.C.#2680(h) sovereign immunity.

There are no "Administrative Remedies" to correct fraud on the Justices of the United States Supreme Court. But we have Respondent's DOC regional counsel Niel D. Friedman's memorandum of April 22, 1988, see Petitioner's Exhibit (F), addressing DOC fraud on the US Supreme Court to MASC Law Chief Edgar A. Hubin, who invoked sovereign immunity for his own perjury before the US Court of Claims, see BERGMAN V. US, 567 F.Supp.460 (D.Colo.1983). Niel D. Friedman's Memorandum reads as follows:

"MEMORANDUM FOR: E.A.Hubin, Chief Personnel Law Division Mountain States Administrative Support Center

FROM: Niel D. Friedman, Regional Counsel NDF

SUBJECT: Ralph Roger Bergman, Civil Action No.87–F–1391 (D.Colo.): "In his attached decision of April 15, Chief Judge Sherman G. Finesilver dismissed the above–referenced $2 million suit in its entirety

against all named individuals (including you) is dismissed because, even accepting Bergman's allegations of fact, his complaint fails to state a constitutional tort for which a remedy is available. The suit against the Government is dismissed because Bergman failed to exhaust his administrative remedies.

Tenacious as he is, Bergman may file a Federal Tort Claims Act claim with the office of the General Counsel.I strongly doubt that such a claim would even receive consideration on its merits because the time limit for filing a claim under the Act, two years from the date of the injury, has long past."(Emphasis underline added by Petitioner). Friedman does not deny DOC fraud on the US Supreme Court. To him, and Hubin it is successful strategy to defeat Petitioner.As to Mr. Hubin's perjury before the US Court of Claims, Judge Alfred A. Arraj ruled in BERGMAN v.US,567 F.Supp.460(1983):"..to the extent that the former government employee's claim against Government is founded on negligence theory, they are barred by the immunity retained under the Federal Tort Claims Act, because each of employee's allegations of misconduct asserts a claim more properly described as an intentional tort than as negligence...".

HOW THE MINNESOTA SUPREME COURT VIEWS FRAUD ON COURTS:

In RAY W. HALLORAN...v. THE BLUE and WHITE LIBERTY CAB Co. Inc., 92 N.W.2d 794(1958) "The Minnesota Supreme Court, Judge Murphy, J.,held as shown in West Key 576(3):

"Principle of res judicata may not be invoked to sustain fraud and judgement obtained by fraud may not be used for application of that doctrine."

Same case under West Key #386(7), citing: Principle of laches must yield where reputation and integrity of court is at stake, and judgement may be set aside at any time for after-discovered fraud upon the court."

Same case: under "Syllabus by the Court":

(1) Where a court is misled as to material circumstances, or its process is abused, resulting in the rendition of a judgment which would not have been given if the whole conduct of the case had been fair, the court has inherent power to vacate the judgment for fraud and that power includes the power to modify.

(2) Courts are established to decide actual questions existing between real parties involved in a

real controversy and the submission of anything but a real controversy is recognized judicially as a fraud upon the court."

HOLLORAN, supra, is still recognized to this day with multiple citation in Sheppard's Citations.

ANALYSIS OF ONE COUNT OF RESPONDENT'S FRAUD ON THIS US SUPREME COURT:

FRAUD (1.0): In BERGMAN V. US, S.Ct.#85-44 "Memorandum in Opposition", a brief written by Respondent to prevent correction of Petitioner's official Personnel Folder with true classification of the 1976 CSC re-written position descriptions that carry false job titles, false duty levels and false competitive levels to this very day, Respondent states on page 2:"...In particular, the Court of Claims noted that Petitioner had never, while employed by the Department, undertaken a formal classification appeal (slip op.27) and that in any event, petitioner suffered no prejudice as a result of challenged position descriptions (id.29)...(3) The court's conclusion was based on the fact that the Civil Service Commission had earlier reviewed petitioner's position descriptions, found them insufficiently detailed in certain respects, and ordered them corrected. As a result of the

corrections, it was determined that, at the time of the 1973 RIF, petitioner was qualified for electronic engineering positions at the GS–7 level. Such a position was offered to and
accepted by petitioner in 1975, with back pay and other benefits restored for the period dating from the 1973 RIF.Bergman, slip op.28–29. Petitioner has persisted in his complaints, however, because the position he was offered and accepted in 1975 was not the one he wanted."

This is a multiple fraud on the US Supreme Court and so documented as follows:

Fraud (1.1) "Petitioner never filed a formal classification appeal".

Factually untrue! Petitioner filed a formal written appeal with Edgar A. Hubin, then Personnel Chief at NTIA in June 1973 for the correction in his then encumbered GS–11 Physicist position description although Petitioner was threatened by former NTIA Personnel Officer Dale C. Gough not to file an appeal for classification correction as it would result in his separation, a fact admitted by Respondent in the Court of Claims. Edgar A. Hubin ignored the appeal and Petitioner was separated in revenge through sham

RIF on August 31, 1973.

A Civil Service Commission audit of 1974 documented personnel practices of Mr. Edgar A. Hubin and his department, see Ct.Cl.#109: Quoting in pertinent part:"Many RSS (Research Support Service) employees interviewed indicated a reluctance to "make waves" for fear of some kind of reprisal. For example, three employees reported being told by a supervisor that they would "be out of a job" of they requested a position audit. Other employees reported that supervisors made such statements as ,"Grievances are not appreciated around here."; "Keep your mouth shut, you have no right of appeal."; and "Don't make waves or you will regret it". And so this Petitioner bore of the brunt of Mr. Hubin's revenge.

FRAUD (1.2) "Petitioner suffered no prejudice as a result of challenged position descriptions". This is factually untrue as certified by Edgar A. Hubin himself in his memo headed "CONFIDENTIAL" dated 12/22/76, Ct.Cl.Ex.#321 where he states to the RSS director J.A.Kemper: "CSC Report concerning Ralph Bergman: As you are aware, this (November 5th, 1976) report found in Mr. Bergman's favor in respect to his contention that the position descriptions of his

employment history were not accurate. In particular, the Commission determined that they lacked necessary specificity and detail, as well as currency with actual duties performed... ...The accuracy of the position description is the foundation stone of the system, upon which employment processes, RIF processes, promotion determinations, performance awards, training eligibility and discipline actions will stand or fall!...

To this Hubin statement we couple Ct.Cl.Ex.# 300, DOC Personnel Chief Joseph C. Brown's letter to Asst. Commerce Secretary Else Porter dated 1/18/78, quoting: "Current contentions, not new, but now supported by evidence Bergman did not have before: (1) Previously-held positions mis-classified" clearer evidence now available tends to support this long-held position. Agency generally concedes but cannot now rectify or "make whole".(2) Certain officials misled FEAA and/or ARB by making submissions in the 1973 RIF appeal which suppressed information favorable to Bergman's appeal (i.e. information about his actual work assignments to show his position was misclassified and his qualifications were stronger in professional engineering than his official employment

records shows)..."

FRAUD (1.3) "Civil Service Commission had earlier reviewed petitioner's position descriptions... ...and ordered them corrected. As a result of the corrections, it was determined that, at the time of the 1973 RIF, petitioner was qualified for electronic engineering positions at the GS–7 level..."

Judicial notice is requested because this is prima facie factually untrue! Respondent reversed events in time by 1.4 years to deceive the US Supreme Court. This is proven by the CSC audit, which is dated November 5th 1976, while the "determination" by CSC FEAA ARB that Petitioner was only qualified on the GS–7 Electronic Engineer level was made in July 1975, with a GS–7 part time position offered in August of 1975. The GS–7 level determination was based on Hubin's fraudulent submissions to the CSC FEAA, see Ct.Cl.Ex.#82 and #300. The fraud on the CSC FEAA is further certified by Hubin withholding his own secret audit of 5/2/75, made prior to the "GS–7 skill determination" of July 1975, an audit that qualified Petitioner up to GS–11 Electronic Engineer, see Ct.Cl.Ex.#337. The exhibit is certified as true by DOC Deputy Personnel Director Joseph C. Brown.

Furthermore, DOC Joseph C.Brown certified on 9/2/80 in Ct.Cl.Ex.#312, item #3 and #4:"Enclosed is a copy of a statement of the qualifications determination dated 5/2/75 signed by Carolyn Eames of the Boulder Personnel Staff. No correspondence submitting the above qualifications determination statement to ARB,RAB or FEAA has been found."

FRAUD (1.4):" Petitioner was qualified for electronic engineering positions at the GS–7 level. Such a position was offered to and accepted by petitioner in 1975, with back pay and other benefits..."

This fraud on the court was not solely because (A) Mr. Hubin's own audit had certified Petitioner qualified at the GS–11 level, which he carefully withheld from CSC FEAA (Ct.Cl.Ex.#337,and #312) but also (B) because the so–called "GS–7 Electronic Engineer reinstatement" was fraudulent. DOC Personnel Director Mr. Joseph C. Brown himself certifies to this in Ct.Cl.Ex.#84 dated 7/22/75 to circumvent CSC reinstatement order. Joseph C. Brown states (with emphasis by Mr. Brown):"...If ITS has to accomplish the action, do so, explaining to Bergman what is being done and telling him it's a paper job" which will immediately be abolished as no

longer required with a new RIF being run however it runs. Hubin will return from leave on monday july 28th; Graham is holding the ...(illegible) until then. Will have Hubin call me when they figured out what to do."

And Mr. Hubin and Mr.Brown "figured out what to do". They sat Petitioner at an empty desk for half a year without assigned work, supervised to see that he just sat there and reporting when he had to go to the men's room. A complaint to the CSC about the sham job resulted in capricious assignments, unsolvable because false and faulty data was given. This made petitioner, a conscientious scientist, very sick and this way DOC hounded him into disability retirement, having first totally bankrupted Petitioner aided by a DOC assigned DOC clerk, Evelyn Salazar, as " Bankruptcy Trustee" guided by a DOC paid private sector attorney, a Bruce Johnson.

Mrs Salazar personally told Petitioner at the time in her credit union office that she knew nothing about her role except that she signed everything that was given to her to sign by "her" attorney Bruce Johnson. Thus the US Bankruptcy Court too was controlled by Respondent to assure that Petitioner had

no assets to hire competent counsel.

Eight (8) additional counts of DOC fraud on the US Supreme Court are addressed in Petitioner's brief BERGMAN v.US, S.Ct.#89–1946 and need not be repeated here. The manner in which Respondent prides himself on the success of his dirty deeds and his pleasure and ridicule to Petitioner's suffering is reflected in his memos shown in Petitioner's current brief and documented in his exhibits (A) through (G).

In Exhibit (D) we read DOC attorney William A. Biglow gloating to MASC law Chief Mr. Edgar A. Hubin's subordinate, Mr. Jim Warren, on 3/24/92:

"For Your Reading Pleasure, another appeal by Mr. Bergman. Our response is due on 4/14/92."

And in Exhibit (A) we note DOJ counsel Beacham O. Brooker to Mr. Hubin on 1/19/83 "CONGRATULATION!" on his successful fraud on the US Court of Appeals for the Federal Circuit. The document containing the fraud on that court is dated September 30th 1992, had Exhibit (B) note attached and was sent to DOC Director Bill Utlaut UNDER "EYES ONLY" CAUTION on 6/21/84. It shows the notations of Edgar A. Hubin under (EAH) where he writes "done" on 6/27/84, six days later.

Aside from his perjured affidavit of February 6th 1979 and other bad faith pleading, we see in EXHIBIT (C) of Petitioner's brief to this Court how Mr. Hubin misled the Court of Claims through his DOJ counsel Beacham O. Brooker on the issue of false position descriptions quoting Mr. Hubin's own words.

Mr. Edgar A. Hubin was identified as "THE AGENCY CHIEF OF STAFF WHOSE JOB WAS TO RESPOND TO AND/OR REBUT BERGMAN'S APPEALS" in a sworn deposition before the USCSC, Denver Region in 1976, by former DOC Executive Officer Frank White Smith, who was subordinate to NTIA agency director Dr. William F. Utlaut, and Smith was quickly terminated through a RIF action.

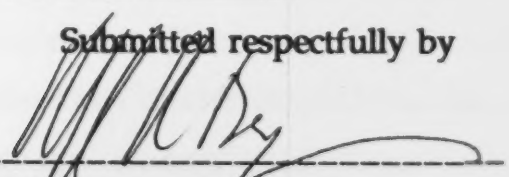
CONCLUSION:

The Honorable US Supreme Court Justices should not allow Respondent to escape his responsibility by "waiver", thereby escaping again from addressing his self-documented frauds before the US Supreme Court and Courts below. The Court should request Respondent to file a response with this Court relative to all hard government-documented facts cited in Petitioner's brief in this case. Deceiving the US Supreme Court and Courts

below in "BERGMAN" through bad faith litigation under "assumption of truth, and invoking 28 USC #2680(h) sovereign immunity by claiming intentional tort to escape accountability for Respondent's misdeeds, should be abhorrent and reprehensible to the Justices of the US Supreme Court. Petitioner sees Respondent's conduct surpassing all bounds of honor and common decency in our civilized society and a brazen effrontery to the Jurisdiction of this Court in gross violation of the Constitution of the United States and its Amendments.

Responding now to this court is imperative and vital for substantial justice to be served under United States law so that Respondent's dishonor of the United States Supreme Court can be addressed by the Justices of the United States Supreme Court regardless of their ruling on Petitioner's current motion for certiorari.

Submitted respectfully by



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THE WAIVER BY SOLICITOR GENERAL DREWS S. DAYS III:

"IN THE SUPREME COURT OF THE UNITED STATES OCTOBER TERM, 1993,

BERGMAN,RALPH ROGER

Petitioner

v.

USA No.93–0969

WAIVER

The Government hereby waives its right to file a response to the petition in this case, unless requested to do so by the court.

DREW S.DAYS III

Solicitor General

January 19,1994

CC: RALPH ROGER BERGMAN

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